

STATE OF MICHIGAN  
COURT OF APPEALS

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STANLEY N. GREGG and JOHN C.  
KALTWASSER,

UNPUBLISHED  
April 3, 2003

Plaintiffs-Appellants,

v

STERLING SOFTWARE, INC., and COMPUTER  
ASSOCIATES INTERNATIONAL, INC.,

No. 235302  
Washtenaw Circuit Court  
LC No. 00-000613-CK

Defendants-Appellees.

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Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs received stock options from firms that were later acquired by defendants. In February 1999, they attempted to exercise the options through the services of a broker. Their intent was to sell the shares short and use the proceeds of the sale to pay for the options. Plaintiffs were informed that they could not exercise the options because they were in a blackout period. The value of the options decreased substantially before plaintiffs were able to exercise them, and they brought this breach of contract action. The trial court granted summary disposition, finding that plaintiffs failed to comply with the terms of the option contract.

We review a trial court's ruling on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 119. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. *Id.* at 119-120. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

An option is a preliminary contract for the privilege of purchase and not itself a contract of purchase. . . . An option is, in effect, only an offer which requires strict compliance with the terms of the option both as to the exact thing offered

and within the time specified. Failure to so comply results in loss of the rights under the option. [*Oshtemo Twp v Kalamazoo*, 77 Mich App 33, 37; 257 NW2d 260 (1977) (citation omitted); see also *Brauer v Hobbs*, 151 Mich App 769, 777; 391 NW2d 482 (1986) (generally, option contracts are strictly construed).<sup>1</sup>]

In this case, the language of the options specified that written notice must be given to the employer to exercise the options. The writing must be signed and accompanied by the full purchase price. Plaintiffs did not follow this procedure.

Defendants stated that they would not allow plaintiffs to exercise the options at the time and in the manner that they wished to employ, but they would have allowed plaintiffs to do a cash purchase of stock using the options, as provided for in the option contract. However, plaintiffs did not do so. Thus, plaintiffs failed to fulfill the strict requirements of the option contract. See *Oshtemo Twp, supra*. The trial court properly granted summary disposition.

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray

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<sup>1</sup> Thus, the doctrines of repudiation and anticipatory breach, on which plaintiffs rely, do not apply to this case.